



**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

B-196084 B-196420 B-196590  
B-196377 B-196469 B-196591  
FILE: B-196411 B-196587

DATE: February 20, 1980

MATTER OF: R. E. Skinner & Associates - 3944

*[Protest of Forest Service Contracts Award]*

**DIGEST:**

1. Protest that procurement for architect and engineer (A&E) service was improper because agency accorded preference to firms located within specified radius of job site is untimely as published notice of project indicated that such preference would be granted and protest was not filed until after date specified in notice for receipt of qualification statements from interested firms.
2. Agency acted properly in deducting evaluation points for firms which had current A&E contracts with the agency or were ranked first for potential contracts rather than adding points for those firms which had not been awarded prior A&E contracts since published notice indicated that existence of current A&E work and potential work would be considered. However, GAO suggests that aim of obtaining equitable distribution of A&E contracts may be more effectively met by expanding criterion to include A&E contracts recently performed.
3. GAO is unable to conclude that agency acted unreasonably by not ranking protester higher in categories of experience and past performance.

34 R. E. Skinner & Associates (Skinner) has submitted eight protests concerning 16 different awards by the Forest Service, Department of Agriculture (Forest Service) to eight different architect and engineer (A&E) firms for land surveys within various National Forests. In each protest Skinner objects to the award of a recent contract and a prior contract to a particular firm. In each of these eight instances, the protest of one award is at least in part timely,

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while the protest of the other award is untimely as it was filed more than 10 days after Skinner was notified of the award. See Section 20.2(b)(2) of our Bid Protest Procedures (Procedures), 4 C.F.R. Part 20 (1979). The following discussion only pertains to the awards which have been protested in a timely manner.

In each protest Skinner objects to the award of two contracts to one firm, contending that since Skinner has never received an A&E contract from the Forest Service such awards are contrary to that agency's stated policy of effecting an equitable distribution of A&E contracts. Skinner also objects to the evaluation approach used by the Forest Service, and argues that it should have been evaluated higher than it was because of its outstanding qualifications. As the facts and issues with regard to each of these protests are essentially the same, they have been combined for purposes of this decision. For reasons set forth below, these protests are denied.

Federal procurement of A&E services is governed by the provisions of the Brooks Bill, 40 U.S.C. §§ 541-544 (1976). Generally, the selection procedures prescribe that the requirement for A&E services be publicly announced. The contracting agency then reviews statements of qualifications and performance data already on file and statements submitted by other A&E firms responding to the public announcement. (Standard Forms 254 and 255). Discussions must be held with "no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach" for providing the services requested. The contracting agency then ranks in order of preference, based on published criteria, no fewer than the three firms considered most qualified. Negotiations are held with the highest-ranked A&E firm. If the procuring agency is unable to reach agreement with that firm on a fair and equitable price, negotiations are terminated and the second ranked firm is invited to submit its proposed fee.

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The Forest Service reports that in each case its intention to contract for A&E services was published in the Commerce Business Daily (CBD). With regard to the evaluation criteria, all of the notices were essentially the same as that set forth below:

"The following elements will be considered in evaluating responses: (a) Specialized experience and technical competence of the firm (including a joint venture or association) with the type of service required; (b) Capacity of the firm to perform the work (including any specialized services) within the time limitations; (c) Past record of performance on contracts with Government agencies and private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules; (d) Geographic location of the firm in relation to the work area (firms located within a 40 mile radius of Albany, Oregon will receive preferential consideration for this element); and (e) The volume of uncompleted work and/or first consideration on other unawarded Forest Service projects will be evaluated with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms including minority-owned firms and firms that have not had prior U.S. Department of Agriculture, Forest Service, Pacific Northwest Region contracts. \* \* \*"

This notice, in addition to stating it was not a request for proposals, solicited firms to submit Standard Forms 254 and 255 outlining their qualifications for the project.

The agency's internal evaluation instructions assigned a maximum of 60 points to criterion (a), experience. Under the instructions, consideration of criterion (b),

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capacity, was limited to whether the key personnel of the A&E firm had appropriate state licenses and whether the firm or assigned personnel had the necessary qualifying experience. No points were assigned to this criterion but if a firm had the proper licenses and assigned personnel, it received a rating of "Yes" and if not, it received a rating of "No". The instructions for criterion (c), past performance, stressed timeliness of performance and quality of work within the previous two years and permitted a maximum score of 50 points. The instructions permitted a maximum of 60 points under criterion (d), location of firm, for those firms located within the stated geographic area and no points for a firm located outside a circle whose radius exceeded 2.2 times the stated radius. No plus points were assignable under criterion (e), value of uncompleted Forest Service work, but for a firm with current uncompleted work or potential Forest Service contracts for which it was under first consideration, points were deducted from the points received under the first four criteria.

The Forest Service states that the qualification statements of all firms which expressed interest, including those of Skinner, were sent to the Board of Evaluation. We are informed that the Board in each case selected and conducted discussions with the three firms considered to be the most highly qualified. The contracting officer completed negotiations with the top ranked firm in each case.

In all cases, Skinner failed to be ranked among the top three firms and its combined score under the criteria measuring experience, past performance and location of firm did not exceed 55 out of a maximum of 170 points except with respect to procurement R6-79-359, where, in addition to 45 points under experience and past performance, it received 60 points because its regional office was within the stated radius. In all cases, Skinner received a "Yes" for capacity and no points were deducted for having unfinished Forest Service contracts.

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Skinner contends the preference for firms within a specified radius of the job site is faulty because it fails to recognize innovative techniques such as the use of aircraft which reduce transportation costs and increase productivity. This ground for protest is clearly untimely under section 20.2(b)(1) of our Procedures, which requires that protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of proposals must be filed prior to bid opening or the closing date for receipt of such proposals. It was apparent from the CBD announcements that this preference would be based solely on distance from the job site with no consideration being given to proposed means of transportation. Therefore, any objections Skinner had to this factor should have been protested prior to the dates specified for receipt of the qualification statements.

Skinner also contends the scoring system used makes it impossible for a firm without previous contracts with the Forest Service to obtain one. It suggests that a proper evaluation system, rather than deducting points from those with uncompleted Forest Service contracts or in first consideration on pending contracts, would add 45 points to the score of a firm without previous Forest Service contracts, 30 points for one previous Forest Service contract, 15 for two previous Forest Service contracts and zero for a firm which has had three or more previous Forest Service contracts.

It may be, as Skinner suggests, that firms without prior Forest Service contracts would have benefited from higher scores had the agency added points for the absence of prior awards. However, under the agency's method of evaluation those firms which had no current or potential business with the Forest Service benefited from an improved relative ranking because firms with current or potential Forest Service business lost up to 43 points under criterion (e). Since the agency's evaluation of this factor was consistent with the criterion in the published announcement we have no

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basis to object to the Forest Service's actions in this regard. See generally Industrial Technological Associates, Inc., B-194398.1, July 23, 1979, 79-2 CPD 47. However, Skinner also seems to question the adequacy of criterion (e) as published in the CBD announcements for these projects. Although any such protest by Skinner is untimely under Section 20.2(b)(1) of our Procedures, we do believe that if the Forest Service's intent is to obtain a more equitable distribution of contracts for these services, it may be more effectively achieved if this criterion were drafted so that a firm's prior contracts with the Forest Service were considered along with the volume of uncompleted work and/or first consideration on other Forest Service projects. We are, by letter of today to the Secretary of Agriculture, suggesting that the Forest Service consider the feasibility of expanding this criterion.

Skinner contends that it was rated too low in each instance under the criteria measuring experience and prior performance. The protester argues that the principal of the firm is highly qualified and contends that the firm has successfully performed closely related work in the past. The agency states that the principal is the only professionally licensed person listed on the firm's qualification statement and indicates that while the statement lists general survey experience it does not include experience in the specific tasks to be performed in the Forest Service's projects. It is the agency's overall evaluation that the information provided by Skinner did not indicate a high level of experience or competence when compared to the qualification statements submitted by competing firms.

Our review of the agency selection of an A&E contractor is limited to examining whether that selection is reasonable. Leyendecker & Cavazos, B-194762, September 24, 1979, 79-2 CPD 217. We are unable to conclude here that the Forest Service's evaluation of Skinner's qualifications under the criteria of experience and past performance was arbitrary or unreasonable.

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Skinner further argues that it should have been awarded 60 additional points because it was located within the specified radius of the job site on projects R6-79-330 and R6-79-361. We will not consider R6-79-330 because Skinner's protest of that award was not timely filed. As far as R6-79-361 is concerned, even if Skinner is correct, the extra 60 points would not have caused Skinner to be ranked in the top three on this project. Thus we see no useful purpose in pursuing this matter.

We believe that the Forest Service's evaluation in each instance was consistent with the published criteria and therefore we see no evidence the awards were the result of bias against Skinner.

The protest is dismissed in part and denied in part.

  
Deputy Comptroller General  
of the United States